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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,760	06/25/2003	Thomas G. Sharland	93297-2	2346

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EXAMINER

JOHNSON, JERROLD D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,760

Applicant(s)

SHARLAND ET AL.

Examiner

Jerrold Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the beacon or alarm of claim as is recited in claim 18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 13-17, and 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Carpenter, US Patent 5,884,760.

With respect to claim 1-10, 14-15, and 20 Carpenter discloses an emergency information storage container kit comprising a storage container 10, and instructions, which comprise forms 60.

The specific instructions set forth in claim 1 have been carefully considered but deemed not to impose any limitations on the claims in that no new and unobvious functional relationship exists between the printed instructions and the remainder of the kit.

In the determination of whether the printed instructions are functionally related to the kit, reference is made to the following two Federal Circuit decisions: *In re Gulack*, 703 F.2d. 1381 [217 USPQ 401] (Fed. Cir. 1983), and *In re Ngai* 70 USPQ 2d 1862 (CA FC 2004).

Quoting Gulack, "The bare presence or absence of a specific functional relationship, without further analysis, is not dispositive of obviousness. Rather, the critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate." *Id.* at 1386.

The CAFC determined that in *Gulack* there was not merely a functional relationship between the printed matter and the substrate, but that the printed matter and the substrate were functionally interrelated, and that there was a new and unobvious functional relationship between the substrate (the container) and the instructions.

The CAFC stated within the *in re Ngai* decision "In *Gulack*, the printed matter would not achieve its educational purposes without the band, and the band without the printed matter would similarly be unable to produce the desired result." *Id.* at 1864.

In the present application, like *Ngai*, there is no new and unobvious functional relationship between the substrate (the container) and the instructions. In *Ngai*, the court stated that "the printed matter in no way depends on the kit, and the kit does not depend on the printed matter." Similarly in the present application, the storage container is suitable to perform the function of a storage container in the manner described in the specification irrespective of the instructions.

With respect to claim 13, Carpenter discloses a sign 70 for displaying at said building to indicate the presence of said emergency information storage container.

With respect to claim 16, Carpenter discloses in column 4, lines 27-28, that "Preferably, the indicia 60 should be readable from the outside of the kit 10 ..."

With respect to claim 17, Carpenter discloses a beacon 50 suitable to facilitate location of the container during an emergency.

With respect to the method claims 21-27, Carpenter discloses a method of assisting rescue personnel comprising preparing human readable material 60 to assist said rescue personnel in locating regular occupants of a building, and installing a storage container at an installation location at said building for storing said human readable material.

With specific respect to claim 22, the human readable material comprises a number (specifically one in the example provided by Carpenter) of individuals or pets regularly occupying said building.

With specific respect to claim 23, the human readable material comprises names of individuals or pets regularly occupying said building.

With specific respect to claims 24 and 25, the human readable material indicates locations of regular occupancy in said building of said named individuals or pets in the form of a floor plan 61 for at least a portion of said building.

With specific respect to claim 26, The human readable material further comprises indicators on said floor plan of locations of regular occupancy in said building of individuals or pets regularly occupying said building (see Fig. 4).

With respect to claim 27, Carpenter further discloses displaying a sign 70 at said building to indicate the presence of said emergency information storage container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter in view of Lauer.

As stated above in the 35 U.S.C. 102(b) rejection, Carpenter discloses all of the claimed limitations except both the instructions and the forms. Carpenter does, however, disclose forms, which were construed as instructions for the purposes of the 35 U.S.C. 102(b) rejection. Within this 35 U.S.C. 103(a) rejection, the forms are construed as forms.

Lauer discloses the inclusion of printed instructions 20 in an emergency information kit designed to instruct emergency personnel.

Accordingly, it would have been obvious at the time of the invention to one of ordinary skill in the art to provide instructions along with an emergency kit, as any kit designed to be used in a uniform manner, such as the kit of both Lauer and Carpenter,

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are only useful to emergency personnel if the users of those kits use them in the proper manner intended and anticipated by emergency personnel.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter in view of d'Arbelles, US Patent 6,286,682.

As stated above in the 35 U.S.C. 102(b) rejection, Carpenter discloses all of the claimed limitations except a computer readable medium storing computer-executable instructions which, when performed by a processor in a computing device, facilitate said preparing.

d'Arbelles teaches the use of computer readable medium 22 storing computer-executable instructions which, when performed by a processor in a computing device, facilitate the preparing of forms.

It would have been obvious at the time of the invention to one of ordinary skill in the art to provide the use of computer readable medium 22 storing computer-executable instructions which, when performed by a processor in a computing device, facilitate the preparing of forms. Specifically, so as to prepare a form in which emergency personnel can quickly find relevant information, such a form must be prepared in a uniform manner. This uniformity is best achieved through the use of a computer readable storing computer-executable instructions. Computer readable storing computer-executable instructions, when performed by a processor in a computing device, facilitate the preparing of uniform forms.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter in view of Rifkin, US Patent 3,292,748.

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As stated above in the 35 U.S.C. 102(b) rejection, Carpenter discloses all of the claimed limitations except a fire resistant material from which the storage container is made.

Rifkin discloses a storage container made from fire resistant material.

It would have been obvious at the time of the invention to one of ordinary skill in the art to make a storage container that is designed for use in emergency situations from a material that ensures functionality during those emergency situations. Accordingly, it would have been obvious at the time of the invention to one of ordinary skill in the art to make a storage container of Carpenter out of fire resistant materials such as is taught by Rifkin.

Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter in view of Waddell, US Patent 6,690,288.

As stated above in the 35 U.S.C. 102(b) rejection, Carpenter discloses all of the claimed limitations except the beacon or alarm being activated by the presence of smoke or a hazardous gas.

Waddell discloses a beacon and alarm that is activated by the presence of smoke.

It would have been obvious at the time of the invention to one of ordinary skill in the art to have made the beacon 50 of Carpenter of the type that is activated by the presence of smoke, as taught by Waddell, as such a beacon would both alert the user of an emergency, and facilitate the ease in which an escape is made by the user.

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Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter.

As stated above in the 35 U.S.C. 102(b) rejection, Carpenter discloses all of the claimed limitations except installations locations proximate to an exterior door of a building, or proximate to an entryway to a floor of a building.

Carpenter discloses "hanging the kit 10 in an easily accessible location", but remains silent as to where such an easily accessible location would be.

It would have been obvious at the time of the invention to one of ordinary skill in the art to have used an installation location close to the ingress/egress of a dwelling such as proximate to an exterior door of a building, or proximate to an entryway to a floor of a building, as those locations would require the least effort by emergency personnel to locate the container in the event they are called upon to respond to an emergency.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter in view of Stutman, US Patent 5,416,695.

As stated above in the 35 U.S.C. 102(b) rejection, Carpenter discloses all of the claimed limitations except the periodic updating of the human readable material.

It is known that medical information may change and that to accommodate such changes, so as to provide medical care that is appropriate, periodic updating of that information must be made. Stutman discloses the benefits of updating medical information in the Abstract of his patent.

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Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art to provide periodic updating of the human readable material so that appropriate medical attention is provided during emergency medical situations.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter in view of Stutman, US Patent 5,416,695, and further in view of Zarchan, US Patent 6,075,755.

As stated above in the 35 U.S.C. 102(b) rejection, Carpenter discloses all of the claimed limitations except providing reminders to update the human readable material.

It is known that medical information may change and that to accommodate such changes, so as to provide medical care that is appropriate, periodic updating of that information must be made. Stutman discloses the benefits of updating medical information in the Abstract of his patent.

Zarchan discloses how reminders related to a medical situation can be provided to ensure that medical instructions have been performed.

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art to provide periodic updating of the human readable material so that appropriate medical attention is provided during emergency medical situations and to provide reminders, as is taught by Barker, so as to ensure that the updates have been performed when necessary.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bush discloses an emergency storage container 10 and a sign 30.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jdj



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